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No. 92-1675

In The

Supreme Court of the United States

October Term, 1992

W. PAT CROW FORGINGS, INC.,

Petitioner,

v.

TRANSTECHNOLOGY CORPORATION,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

I. STATEMENT OF THE CASE 1

A. The Underlying Dispute 1

B. The Relevant Procedural History 2

1. TransTechnology Admits Crow's Claim Related to the Second Contract 2

2. TransTechnology Challenges Crow's Claim for Recovery of Attorneys' Fees for the Defense of the Counterclaim ... 5

3. The District Court Issues Warnings Concerning the Recovery of Attorneys' Fees 5

4. Crow Intentionally Disregards the Court's Order Requiring Segregation of Attorneys' Fees 6

5. The District Court Denies Crow's Claim to Recover Attorneys' Fees 8

II. SUMMARY OF ARGUMENT 10

III. ARGUMENTS AND AUTHORITIES 12

A. Crow was not deprived of Due Process of Law 12

B. The District Court's Denial of Crow's Application for Attorneys' Fees did not Create a Conflict Between State and Federal Law or Practice 15

TABLE OF CONTENTS – Continued

Page

1. The Trial Court's Denial of Crow's Attorneys' Fees was Proper Because Crow was Required to Segregate its Fees and Failed to do so 16

2. Texas Law did not Require the District Court to Review all of the Evidence Presented in Connection with Crow's Claim for Attorneys' Fees to Determine how much of that Evidence was Related to the Prosecution of Crow's Claim under PO 53528 17

3. The Denial of Attorneys' Fees under these Circumstances was a Proper Exercise of the Court's Inherent Sanction Authority 19

IV. CONCLUSION 20

TABLE OF AUTHORITIES

Page

FEDERAL CASES

A. Hirsh, Inc. v. United States, 948 F.2d 1240 (Fed. Cir. 1991) 14

Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240 (1975) 16

Chambers v. Nasco, Inc., 111 S.Ct. 2123 (1991).. 10, 16, 19

Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) 19, 20

FDIC v. Daily, 973 F.2d 1525 (10th Cir. 1992) 11

Hill v. Norfolk & Western R.R. Co., 814 F.2d 1192 (7th Cir. 1987) 14

Link v. Wabash R.R. Co., 370 U.S. 626 (1962) 11, 12, 13, 15, 19

Louisiana v. Sparks, 978 F.2d 226 (5th Cir. 1992) 14

Lubrizol Corp. v. Exxon Corp., 957 F.2d 1302 (5th Cir.), cert denied, 113 S.Ct. 186 (1992) 20

Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980) 19

Societe Internationale Pour Participations Industrielles Et Commercials, S.A. v. Rogers, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 13

TEXAS CASES

Coleman v. Rotana, Inc., 778 S.W.2d 867 (Tex. App. – Dallas 1989, writ denied) 9, 17

Flint & Assocs. v. Intercontinental Pipe & Steel, Inc., 739 S.W.2d 622 (Tex. App. – Dallas 1987, writ denied)..... 16, 17, 18

McKenna Invs. v. Atlas Energy, 832 S.W.2d 651 (Tex. App. – Fort Worth 1992, no writ) 18

TABLE OF AUTHORITIES – Continued

Page

New Amsterdam Casualty Co. v. Texas Indus., Inc., 414 S.W.2d 914 (Tex. 1967) 16

Stewart Title Co. v. Sterling, 822 S.W.2d 1 (Tex. 1991) 17, 18

FEDERAL RULES AND STATUTES

28 U.S.C. § 1927 6

Fed. R. Civ. P. 11 5

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BRIEF IN OPPOSITION

Respondent, TransTechnology Corporation, respectfully requests that this Court deny the petition for writ of certiorari of W. Pat Crow Forgings, Inc. seeking review of the judgment and order of the Fifth Circuit Court of Appeals in this case.

I. STATEMENT OF THE CASE

A. The Underlying Dispute

The parties entered into two separate contracts for the purchase, by TransTechnology, of specified quantities of frangible nut forgings that were to be used in NASA's

space shuttle program. (29R.7797-98) Crow delivered one lot of the forgings to TransTechnology under the first contract, Purchase Order 49047 dated November 11, 1982. (15R.3822; 29R.7798) After TransTechnology made full payment under this contract (29R.7798), TransTechnology discovered that the finished nuts produced from the forgings were defective. Tests performed in accordance with NASA regulations indicated that the defects were attributable to Crow's utilization of poor forging practices and poor raw materials. (19R.4893; 21R.5428; 15R.3897; 4R.0944-45, 0947-48)

A second lot of frangible nut forgings were delivered to TransTechnology pursuant to the second contract, Purchase Order 53528 dated October 6, 1983. (15R.3830) Although these forgings ultimately tested within the required specifications, TransTechnology refused to pay for the second shipment as an offset for its losses on the defective shipment under PO 49047. (29R.7797)

B. The Relevant Procedural History

1. TransTechnology Admits Crow's Claim Related to the Second Contract

Crow filed suit in June 1985 claiming non-payment of sums owed under PO 53528. (1R.0008) In its answer, TransTechnology alleged various affirmative defenses to the contracts and counterclaimed for Crow's defective performance under PO 49047. (1R.0012, 0016) From the beginning, Crow's counsel recognized that all TransTechnology's defenses arose from its complaints about the first contract. This understanding was first articulated in Crow's August 1985 response to TransTechnology's

counterclaims. (1R.0040) Shortly thereafter, Crow again addressed the distinct nature of the claims that each party was asserting. In a sworn discovery motion, Crow's counsel described the contracts at issue as "entirely different" and characterized the defenses raised by TransTechnology as being "based on transactions extraneous to the contract upon which plaintiff's complaint is based." (3R.0606) Counsel for Crow described TransTechnology's counterclaim as being asserted "under an entirely different contract" that "raised complex metallurgical and other scientific issues" that required Crow's counsel to expend a great deal of time and to discover "large volumes of documents and significant amounts of information pertinent to the counterclaim." (3R.0552) Counsel for Crow described Crow's complaint as "a simple breach of contract action." (3R.0552)[1]

TransTechnology confirmed Crow's understanding of the pleadings in December 1985 in its response to Crow's Interrogatory No. 21(b). In that response, TransTechnology maintained that the sole basis for each of its affirmative defenses – as well as its counterclaims – was the defective goods delivered under PO 49047. (1R.0168-70) This understanding was again confirmed during the depositions of two TransTechnology employees in September 1989. (5R.1172)

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[1] Despite these sworn statements (made by Crow's counsel prior to the time he realized the significance of the statements in relation to Crow's claim to recover attorneys' fees), Crow now contends that the work performed by its attorneys regarding the claims related to the two separate contracts could not be readily segregated. *See* Petition for Writ of Certiorari at 11-13.

TransTechnology formally stipulated in February 1991 that Crow was entitled to recover on its claim for TransTechnology's breach of PO 53528. (13R.3405) In March 1991, TransTechnology and Crow submitted a Joint Pre-Trial Order which, in addition to defining the issues to be tried, detailed the various facts and issues of law to be addressed at trial. (29R.7787) Counsel for TransTechnology and counsel for Crow signed the Pre-Trial Order on March 5, 1991. (27R.7300) The Joint Pre-Trial Order raised no questions of fact or law regarding Crow's claim on PO 53528, and it focused primarily upon TransTechnology's counterclaim pertaining to PO 49047. Included in the Joint Pre-Trial Order was TransTechnology's stipulation that Crow had "fully performed all of its obligations pursuant to P.O. 53528 and that it is entitled to recover from [TransTechnology] (subject to any offset [TransTechnology] may be entitled to pursuant to its separate claims for relief), the amount currently outstanding on P.O. No. 53528. . . . "[2] (13R.3405-6)

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[2] In his sworn affidavit, Bill Bogle, counsel for Crow, indicated that work performed by him after TransTechnology's formal stipulations to Crow's claim under PO 53528 pertained to recovery of that claim. (R29.7635) In support of his sworn statement, Bogle stated that the stipulation "did not waive its pleaded defenses . . . nor did TransTechnology Corporation confess judgment." (29R.7635) Bogle characterized TransTechnology's stipulation as "conditional" and used that characterization as his excuse for not segregating fees for the period including the jury trial, which only addressed TransTechnology's claim. (29R.7635) A review of TransTechnology's stipulation illustrates the absurd nature of Bogle's statements. Bogle's affidavit offered no explanation for why the stipulation in the Joint Pre-Trial Order was not binding. Crow has asserted, however, in this Court and in the court of appeals, that even though

2. TransTechnology Challenges Crow's Claim for Recovery of Attorneys' Fees for the Defense of the Counterclaim

Prior to trial, Crow sought leave to amend its pleadings to add a claim for attorneys' fees associated with its defense of TransTechnology's counterclaim. (13R.3371) TransTechnology objected to Crow's claim for fees associated with the defense of the counterclaim and this issue was included in the Joint Pre-Trial Order as an issue of law to be determined by the court. (29R.7807)

3. The District Court Issues Warnings Concerning the Recovery of Attorneys' Fees

On August 28, 1991, TransTechnology moved to bifurcate the trial pertaining to the parties' respective claims for attorneys' fees from the trial on the merits of the counterclaim and, because Crow's claim was admitted, requested that the court realign the parties. (22R.5881) The district court, by order dated September

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both attorneys signed the Joint Pre-Trial Order (27R.7300), Crow "had no assurance that TransTechnology was legally and absolutely foreclosed from claiming" delivery of defective forgings pursuant to PO 53528 because the judge did not sign the Joint Pre-Trial Order until after trial. Petition at 9-10. Crow's claim that TransTechnology's stipulations and admissions were "conditional" strains the outer boundaries of Rule 11. In light of this most flagrant mischaracterization of the facts, TransTechnology contends that this Court cannot rely on any of Crow's characterizations of the record because those characterizations frequently are not accurate. Not surprisingly, nowhere in Crow's entire statement of the case are there any references to the record on appeal.

17, 1991, granted both requests and instructed the parties to submit a Joint Supplemental Pre-Trial Order setting forth specific information and supporting documentation concerning their claims for attorneys' fees. (23R.5914) The September 17 order contained two warnings:

1. "The parties are hereby put on notice that the Court will not entertain any testimony or argument in the second phase of this trial that is outside the scope of the Supplemental Order." (23R.5920); and
2. The court "is willing to deny an attorney's fees claim made by an attorney, firm or party that is in violation of [28 U.S.C. § 1927]" (allowing the imposition of fees for vexatious or unreasonable conduct).[3] (23R.5919)

The court issued a similar warning a few days later in a separate order in which the court stated that failure to comply with the court's order to present complete and specific information relating to the parties' claims for attorneys' fees "will result in a denial of attorney's fees as the court deems appropriate." (23R.6036)

4. Crow Intentionally Disregards the Court's Order Requiring Segregation of Attorneys' Fees

The parties submitted the Joint Supplemental Pre-Trial Order on October 4, 1991. (29R.7809) Both

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[3] The warnings arose from a background of claims by counsel for both TransTechnology and Crow of unreasonable conduct on the part of the other. These complaints were continual throughout much of this litigation and many of these disagreements were bitter and acrimonious. *See* note 5 *infra*.

TransTechnology and Crow submitted substantial business records and information pertaining to attorneys' fees. Crow, however, refused to distinguish between the fees incurred for the prosecution of its claim on PO 53528 and the fees incurred in defense of TransTechnology's counterclaims on PO 49047. (29R.7822-23) Crow argued instead that all its fees were recoverable because it had to defeat the counterclaim *in order to collect* the amounts due on its claim. Moreover, in direct contravention of the September 17 order, Crow blatantly declared that it reserved the right to submit additional information pertinent to proving segregated attorneys' fees, if necessary, at a later time. (29R.7822-23) TransTechnology expressly challenged this attempt by Crow to reserve its rights to supplement the information submitted in conjunction with the Joint Supplemental Pre-Trial Order. (29R.7818)

Only TransTechnology's counterclaim was tried to the jury. (27R.7270-71, 7278, 7301-08) After a two-week trial in which the jury returned findings in favor of Crow pertaining to TransTechnology's counterclaim arising from PO 49047, TransTechnology asked the court to determine Crow's claim for fees by submission rather than require a second trial. (27R.7355) The court granted TransTechnology's motion by order dated February 12, 1992. (28R.7429) In its order, the court directed Crow to segregate its fees, and instructed both parties to submit affidavits and additional evidence relevant to determining the amount of the segregated fees to be awarded. (28R.7429) In a sixteen page memorandum opinion that accompanied the order, the district court expressly addressed and rejected the legal arguments previously made by Crow in support of its contention that it was not

required to segregate fees, and it instructed Crow to submit affidavits evaluating only "the work performed on Purchase Order 53528." (28R.7413-28, 7429)

5. The District Court Denies Crow's Claim to Recover Attorneys' Fees

On February 27, 1992, Crow submitted its attorneys' affidavits and other evidence purportedly in compliance with the court's order. (28R.7430; 29R.7627) Rather than segregate Crow's fees as ordered, however, Crow's attorneys testified in their affidavits that Crow's fees and expenses could not be segregated because Crow had to prevail on the counterclaim *in order to collect* the monies owed on its claim. (28R.7430-51; 29R.7627-44) In the affidavits, Crow's counsel engaged in semantic gamesmanship designed to sidestep the district court's specific instructions regarding segregation and merely reasserted, via sworn testimony, the same legal arguments regarding "net recovery" properly rejected in the court's February 12 memorandum opinion and order. For example, in his affidavit, John McBryde gave the following testimony:

> "All of the work I did . . . had as their objective the enforcement of collection. . . . "
>
> * * *
>
> "None of the work . . . was done by me solely to defeat the counterclaim . . . [because] I am satisfied . . . that the purpose of Trans-Technology Corporation's counterclaim was to frustrate the efforts of my client to collect the debt owed. . . . "

* * *

> "The fact of the matter is that all of that time [McBryde's work pertaining to the counterclaim] had as its ultimate goal the enforcement of the unpaid indebtedness owed . . . to my client. . . . "

* * *

> "Any work that was related to the affirmative defenses/counterclaim . . . was only incidental to the purpose for which this action was instituted in the first place, i.e. collection of the amount owed to my client. . . . "

(28R.7430) Crow, in re-urging these rejected contentions, failed to segregate its fees as ordered by the court and failed to provide the court any guidance as to what work related to proving Crow's claim, as distinguished from work related to disproving TransTechnology's counterclaim.[4] As a consequence, on March 6, 1992, the court entered an order denying Crow its attorneys' fees. (29R.7746) The Fifth Circuit affirmed.

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[4] Crow argues that "Crow's attorneys' inability to segregate fees in the manner, or to the extent that the district court apparently contemplated, was simply not possible in this case." Petition at 13 n.1. This argument and Crow's arguments to the district court are premised on Crow's steadfast refusal to acknowledge the controlling law. Crow argued in the district court that the segregation issue was governed by a "net recovery" type test. This net recovery test, however, has been rejected by the Texas courts. *See e.g., Coleman v. Rotana, Inc.*, 778 S.W.2d 867, 873-74 (Tex. App. – Dallas 1989, writ denied). Having failed to avoid the consequences of this rule, the attorneys' affidavits responsive to the court's order defiantly tried to resurrect the rejected "net recovery" argument through craftily drafted affidavits. The district court saw through this ruse.

II. SUMMARY OF ARGUMENT

The issue before the court is whether Crow was unjustly deprived of its attorneys' fees in the underlying litigation. The underlying litigation involved, in Crow's own words, a simple breach of contract claim by Crow and a counterclaim by TransTechnology that implicated complex scientific and metallurgic issues. Under controlling state law, Crow was entitled to recover its attorneys' fees for work performed by its attorneys in connection with Crow's breach of contract claim against TransTechnology but not for any work performed in defending against TransTechnology's counterclaim. Before the district court could award Crow any amount of attorneys' fees, Crow was required to segregate the recoverable fees (those related to the prosecution of its claim) from the non-recoverable fees (those related to the defense of TransTechnology's counterclaim). After Crow ignored two orders and two separate warnings to segregate its fees, the district court denied Crow's application for fees. The district court appropriately viewed Crow's defiant refusal to follow a legitimate order as grounds for denying Crow its fees.

The action of the Fifth Circuit Court of Appeals in affirming the district court's order did not create a conflict with this Court's decisions and the decisional law in the Third Circuit. Nor did it deny Crow due process of law. *See* Petition at 16. This Court's decision in *Chambers v. Nasco, Inc.*, 111 S.Ct. 2123 (1991) specifically supports the district court's decision to deny Crow all of its attorneys' fees after Crow failed to comply with the district court's order to segregate its fees. Crow was given ample

notice of the likelihood that the district court would not award attorneys' fees if Crow did not comply with the court's order. Under these facts, an adversary hearing was not required before implementing the previous warnings. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 632 (1962); *FDIC v. Daily*, 973 F.2d 1525, 1531 (10th Cir. 1992).[5]

Crow also argues that the denial of its fees violated a fundamental principle of law that federal district courts sitting in diversity must apply state substantive law. *See* Petition at 21. Although Crow's articulation of the fundamental principle may be accurate, that principle is not determinative of the issues pending before this Court. Crow contends that by denying Crow its attorneys' fees the district court refused to recognize state substantive

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[5] The district court's warnings and orders prior to denying the recovery of fees were made in reference to an extremely contentious procedural history. While Crow accurately notes that TransTechnology never filed a motion for sanctions, TransTechnology did raise serious complaints against Crow's attorneys related to improperly securing the entry of a discovery order, which order caused TransTechnology to spend hundreds of thousands of additional dollars to present the case. TransTechnology refers the Court to the following portions of the record: (1) TransTechnology's Response to Crow's Third Motion for Default Judgment (4R.0894); (2) TransTechnology's Motion to Vacate Order dated April 15, 1988 (13R.3194); (3) TransTechnology's Brief in Support of Response to Third Motion for Default and Motion to Vacate (13R.3224); (4) John McBryde Affidavit filed December 15, 1989 (13R.3331, 3332-33); (5) TransTechnology's Response to Request for Ruling (13R.3364); (6) TransTechnology's Brief Regarding March 29, 1991 Show Cause Hearing (14R.3480); (7) Order Denying Third Motion for Default Judgment dated June 24, 1991 (22R.5878); and (8) John McBryde Affidavit filed February 27, 1992 (28R.7430, 7466).

law. In essence Crow argues that the district court had no authority to do anything other than award Crow its attorneys' fees despite the fact that Crow blatantly refused to follow the district court's orders. Crow's argument is without merit. Under the circumstances of this case, the district court's order denying Crow its attorneys' fees is founded upon the well-established principle that a district court has the inherent power to control its docket.

III. ARGUMENTS AND AUTHORITIES

A. Crow was not Deprived of Due Process of Law

Crow argues first that the district court's denial of its claim to recover attorneys' fees violated Crow's right to due process of law. The law is well-settled, however, that due process does not necessarily require the kind of express notice Crow's arguments envision, nor does it require a hearing prior to the imposition of sanctions. *Link*, 370 U.S. at 626. In *Link*, this Court outlined the requirements of due process as follows:

> [T]he fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. . . . But this does not mean that every order entered without notice and a preliminary adversary hearing offends due process. *The adequacy of notice and hearing respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be taken to have of the consequences of its own conduct.*

Id. at 632 (Emphasis added).

In *Link*, the petitioner challenged both the power and discretion of the district court's *sua sponte* dismissal of its negligence action. The dismissal resulted from the petitioner's counsel's failure to appear at a scheduled pretrial conference with the district court. The district court, after reviewing the history of the case, found that petitioner's counsel had failed to indicate any reasonable excuse for his non-appearance and dismissed petitioner's cause of action for failure of plaintiff's counsel to appear at the pre-trial conference and for failure to prosecute the action. In doing so, the court stated that the dismissal was in the exercise of its inherent power. On appeal to this Court, the petitioner argued that procedural due process precluded the district court's *sua sponte* invocation of any sanctions authority that the court might have to dismiss the case. Applying reasoning equally applicable to the case at bar, this Court rejected the petitioner's due process arguments and affirmed the district court's dismissal of the case:

> [T]his is not a case in which failure to comply with a court order 'was due to inability fostered neither by . . . [petitioner's] own conduct nor by circumstances within its control.' *Societe Internationale Pour Participations Industrielles Et Commercials, S.A. v. Rogers*, 357 U.S. 197, 211, 78 S.Ct. 1087, 1095, 2 L.Ed.2d 1255. Petitioner's counsel received due notice of the scheduling of the pretrial conference, and cannot now be heard to say that he could not have foreseen the consequences of his own default in attendance.

370 U.S. at 636.

Moreover, notwithstanding Crow's argument to the contrary, "the right to a hearing, whether that right is

implicit or . . . explicit, is limited to cases where a hearing would assist the court in its decision." *Hill v. Norfolk & Western R.R. Co.*, 814 F.2d 1192, 1201 (7th Cir. 1987). *See also A. Hirsh, Inc. v. United States*, 948 F.2d 1240 (Fed. Cir. 1991) (where counsel was explicitly informed by the opinion of the court that her motion was without merit, there was "no genuine issue concerning constitutionally required notice and opportunity to be heard"); *Louisiana v. Sparks*, 978 F.2d 226 (5th Cir. 1992) (no abuse of discretion in *sua sponte* dismissal of action where "district court gave the parties warning prior to dismissal that if neither did anything, the case would be dismissed in two weeks"). In *Hill*, the court put it succinctly, "Where . . . the conduct that is . . . sanctioned consists of making objectively groundless legal arguments in briefs filed in this court, there are no issues that a hearing could illuminate." 814 F.2d 1201. That statement applies with equal force in this case.

After the district court directed both parties in this case to submit all information pertaining to their respective claims for attorneys fees (23R.5920), Crow refused to present any evidence pertinent to segregating its fees and, instead purported to reserve the right to do so at a later time. (29R.7817) On February 12, 1992, the court entertained each of Crow's arguments on the segregation issue and, after rejecting them, not only afforded Crow a second opportunity to introduce evidence of its segregated fees, but in fact ordered it to do so. (28R.7427-29) Again Crow refused. This refusal followed on the heels of at least two separate warnings by the district court, first, on September 17, and subsequently, on September 23, that any failure to comply with the court's orders may

result in a denial of fees. Clearly, "[t]he circumstances here were such as to dispense with the necessity for advance notice and hearing" prior to the denial of Crow's fees. *Link*, 370 U.S. at 632. Crow's due process challenge is nothing more than an attempt to avoid the foreseeable consequences of its own willful disobedience of the district court's orders.

B. The District Court's Denial of Crow's Application for Attorneys' Fees did not Create a Conflict Between State and Federal Law or Practice

Crow's second argument for reviving its claims to recover attorneys' fees is that the district court improperly applied federal law to an issue governed by state law. Crow's argument is without merit. Without regard to whether the district court could deny Crow's fees as a sanction, the denial of fees was proper because Crow failed to submit sufficient proof illustrating the amount of fees that it was entitled to recover. Once the district court determined that Texas substantive law required Crow to segregate its attorneys' fees, the court could prescribe any procedure it deemed necessary for the orderly disposition of the matter pending before it – including the issuance of an order to Crow requiring Crow to segregate the fees relating to the prosecution of Crow's claims with respect to PO 53528 from the fees relating to the defense of TransTechnology's counterclaim. Thus, assuming arguendo that state law would direct its judges to do their own work to segregate attorneys' fees when required, a district court does not violate *Erie* principles by ordering assistance from trial counsel in making such a determination in a case pending in federal court. In any

event, the district court was correct in denying Crow its attorneys fees as a sanction because Crow willfully disobeyed the directives of two court orders requiring submission of proof segregating its fees. Once Crow disregarded the district court's order, the court had inherent authority to manage its own proceedings and control the conduct of those appearing before it. *Chambers*, 111 S.Ct. at 2123. "[T]he inherent power of the court to sanction parties for misconduct cannot be made subservient to any state policy." *Id.* at 2127.

1. The Trial Court's Denial of Crow's Attorneys' Fees was Proper Because Crow was Required to Segregate its Fees and Failed to do so

In a diversity case, the recoverability of attorneys fees is governed by controlling state law. *Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240, 259 (1975). In Texas and most other jurisdictions, it is well-settled that attorneys' fees incurred in the prosecution of a legal claim are not recoverable unless provided for by statute or agreement. *New Amsterdam Casualty Co. v. Texas Indus., Inc.*, 414 S.W.2d 914, 915 (Tex. 1967). It is equally well-settled in Texas that fees incurred in the defense of a counterclaim are not generally recoverable by statute and therefore must be segregated from otherwise recoverable fees. *Flint & Assocs. v. Intercontinental Pipe & Steel, Inc.*, 739 S.W.2d 622, 624 (Tex. App.-Dallas 1987, writ denied). The only circumstances in which fees attributable to the defense of a counterclaim are recoverable, and therefore do not have to be segregated according to the general rule, is when

the claims and counterclaims arise out of *the same transaction and* are so interrelated that their prosecution or defense *entails proof or denial of essentially the same facts. Coleman v. Rotana, Inc.*, 778 S.W.2d 867, 874 (Tex. App.-Dallas 1989, writ denied); *Flint*, 739 S.W.2d at 624-25.

As evidenced by the record in this case, Crow's claim and TransTechnology's counterclaims in this case arose out of separate, unrelated contracts and entailed proof or denial of different facts. Accordingly, the district court was correct in concluding in its February 12, 1992 order that Texas law precluded Crow's recovery of fees attributable to the defense of TransTechnology's counterclaim and in ordering Crow to segregate such fees from the fees attributable to the prosecution of Crow's claim under PO 53528. (28R.7413 and 7429)

2. Texas Law did not Require the District Court to Review all of the Evidence Presented in Connection with Crow's Claim for Attorneys' Fees to Determine how much of that Evidence was Related to the Prosecution of Crow's Claim under PO 53528

Regardless of whether the court exercised its sanction authority or ruled as a matter of law that there was no evidence of Crow's segregated fees, Texas law did not require, as Crow contends, that the district court ignore Crow's refusal to submit evidence of its segregated fees and make a fee award based on the information Crow did submit. Crow's contention to the contrary rests on two cases, *Stewart Title Co. v. Sterling*, 822 S.W.2d 1 (Tex. 1991)

and *Flint*, 739 S.W.2d at 622. Contrary to Crow's contention, *Sterling* and *Flint* are not applicable.

Crow contends that under *Flint* the district court could not order segregation of fees until after it heard evidence of all Crow's fees. *See* Petition at 25-6. Crow's interpretation of *Flint* strains credibility. In *Flint*, the issue was whether the trial court erred in *hearing* evidence of a reasonable fee for all services rendered in the case including services for which fees were not recoverable. The court held that it was not error for the court to *hear* the evidence; it would only be error to actually award fees for the services that should have been excluded. 739 S.W.2d at 625. Moreover, in a recent decision, the state court of appeals sitting in Fort Worth affirmed a denial of attorneys' fees even though the party had "submitted an extensive record of billed hours and charges" because there was "no evidence as to the breakdown in categories to make a finding." *McKenna Invs. v. Atlas Energy*, 832 S.W.2d 651, 657 (Tex. App. – Fort Worth 1992, no writ) (citing *Sterling*).

Sterling, on the other hand, addresses *only* those instances where the trial court allows evidence of unsegregated fees over proper objection and is reversed on appeal. In these circumstances, unlike the case at bar, there is no court order requiring the fee claimant to submit evidence of segregated fees, nor any violation of such order.

Crow was given the opportunity and made its argument that segregation was not required. The trial court ruled against it, and Crow was ordered to present evidence of its segregated fees. Crow, however, refused. The

affidavits Crow supplied did not comply with the court's order and did not provide the information necessary to making a proper fee award. For those reasons, the court rejected the affidavits and specifically found that they "deliberately inhibit[ed] the court's duty to determine the reasonableness of attorneys fees." (29R.7746) Accordingly, the court had no evidence from which it could determine Crow's fees and therefore, as a matter of law, was required to deny Crow's claim for fees.

3. The Denial of Attorneys' Fees under these Circumstances was a Proper Exercise of the Court's Inherent Sanction Authority

Federal courts enjoy the inherent authority to impose sanctions in addition to any sanction authority they possess by virtue of rules or statutes. *Link*, 370 U.S. at 629-631. Where sanctions are appropriate to vindicate the court's judicial authority, the court may not only shift fees where appropriate, but may impose even more severe sanctions, such as the outright dismissal of the lawsuit. *Id.*; *Chambers*, 111 S.Ct. at 2123; *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980). Despite Crow's contentions to the contrary, *Chambers* demonstrates that denial of fees is within the court's inherent sanction authority, and that any fee-shifting that may result therefrom is not affected by substantive state laws and does no harm to any *Erie* principles.

In *Chambers*, the district court taxed Chambers with approximately $1,000,000 in attorneys fees as a sanction for bad faith conduct during the course of the litigation. Those sanctions were affirmed by the Fifth Circuit Court

of Appeals and this Court. Chambers argued that the American rule precluded fee-shifting and that the district court could not tax fees for bad faith conduct because there was no substantive state law that recognized any bad faith exception to such rule. Chambers argued that by doing so, the court was engaged in improper fee-shifting which resulted in the inequitable administration of laws in violation of the principles set out in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

This Court concluded that there was no merit to Chambers assertion. This Court's decision in *Chambers* demonstrates that the district court acted well within its inherent authority to manage its own docket by denying Crow's attorneys fees as a result of its willful disobedience to the court's order to submit evidence of segregated fees. *See also Lubrizol Corp. v. Exxon Corp.*, 957 F.2d 1302 (5th Cir.), *cert denied*, 113 S.Ct. 186 (1992) ("We are not prepared to say, with the case in its peculiar procedural posture as a result of Lubrizol's failure to comply with the district court's order, that the district court abused its discretion in arriving at the amount of the fee").

IV. CONCLUSION

TransTechnology requests that this Court affirm the judgment of the Fifth Circuit Court of Appeals, grant judgment to TransTechnology against Crow for costs

associated with this appeal, and provide TransTechnology such other and further relief to which it may be entitled.

Respectfully submitted,

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